COMPARISON OF S.190, COMMITTEE ADODPTED H.R. 1461 AND BANKING REGULATION

PREPARED FOR THE COUNCIL OF FEDERAL HOME LOAN BANKS

BY

BARNETT SIVON & NATTER, P.C.

June 14, 2005

Comparison of Banking Law, S.190, and Committee Adopted H.R. 1461

Subject	Banking Law	S. 190	Committee Adopted H.R. 1461
Short Title		Federal Housing Enterprise Regulatory Reform Act of 2005 (FHERRA of 2005).	Federal Housing Finance Reform Act of 2005 (FHRA of 2005)
Definitions	Under the FDI Act, an "institution-affiliated party" includes any director, officer, employee, or controlling stockholder, or agent of a bank; any shareholder, consultant, joint venture partner or other person who participates in the conduct of the affairs of the bank; and certain independent contractors, such as attorneys, appraisers and accountants who meet the standards for inclusion. [12 USC § 1813(u)]. "Violation" is defined to include causing, aiding, participating in or abetting. [12 USC § 1813(v)]	Amends definitions used in the Federal Housing Enterprise Financial Safety and Soundness Act of 1992 Act ("92 Act"). Defines "Enterprise-Affiliated Party" to include any officer, director, employee or agent of a regulated entity; any shareholder on consultant who participated in the affairs of a regulated entity, independent contractors who participates in a violation, unsafe act or breach of fiduciary duty; and any not-for-profit corporation that is principally funded from any regulated entity. Defines "violation" to include causing, aiding, participating in or abetting a violation. [Sec. 2]	Same as S. 190 except: (i) The terms "affiliate" and "capital distribution" are defined only for the "Enterprises" in S. 190. In the House bill, the terms "affiliate" and "capital distribution" are defined for purposes of all regulated entities; (ii) The term "New program" is not defined in S. 190. In the House bill, is defined in the same manner as current law; (iii) "Regulated-entity affiliated party" includes all independent contractors without a "participation" requirement; (iv) A "FHLBank" is defined as a bank established under the FHLB Act; and (iv) "Violation" not defined. [Sec. 2]
Establishment of New Agency	OCC is given general authority to prescribe regulations to carry out the responsibilities of the Office. [12 USC § 93a]	"Federal Housing Enterprise Regulatory Agency" ("FHERA") is an independent agency with "general regulatory authority" over the regulated entities. [Sec. 101]	Same, except name of the agency is the "Federal Housing Finance Agency," ("FHFA") and the agency has "general *supervisory* and regulatory authority" over the regulated entities. [Sec. 101]
Director of New Agency	Comptroller appointed by the President, with the advice and consent of the Senate (PAS), for a 5-year term. President may remove "upon reasons communicated to the Senate." [12 USC § 2]	Director to be appointed by the President with the advice and consent of the Senate (PAS) for a 6-year term. Removal only "for cause." [Sec. 101]	Same except: (i) Five-year term. [Sec. 101]

Subject	Banking Law	S. 190	Committee Adopted H.R. 1461
Deputy Directors	Four Deputy Comptroller are specified by statute and others can be created by administrative action of the Comptroller. [12 USC § 4]	The agency shall have three Deputy Directors: (i) Enterprise Regulation; (ii) FHLBank Regulation; and (iii) Housing Mission and Goals. [Sec. 101]	Same, except Deputy Director for Housing's functions specifically include oversight of the housing mission of the FHLBanks. [Sec. 101]
Appointment Prior to the Effective Date	No similar provision.	No similar provision.	Notwithstanding any other provision of law, the President may, at any time after enactment, appoint an individual to serve as the Director. [Sec. 101]
Transitional Provision	No similar provision.	The person serving as Director of OFHEO on the effective date automatically becomes the new Director until the President appoints and Senate confirms a Director. [Sec. 101]	The Director of OFHEO shall serve as Director until a successor has been appointed and confirmed. [Sec. 101]
Acting Director	During a vacancy or during the death or disability of the Comptroller, the First Deputy Comptroller shall possess the power and perform the duties of the Comptroller. [12 USC § 4]	In the event of the death or disability of the Director, the Federal Housing Enterprise Board, by majority vote, is to choose one of the Deputy Directors to serve as Acting Director. [Sec. 101]	No specific provision for Acting Director. Vacancies Act provides procedures for an Acting Officer
Principal Duties	No similar provision for the OCC. The Director of OTS "shall provide for the examination, safe and sound operation, and regulation of savings associations. The Director of OTS shall exercise all power so as to "encourage savings associations to provide credit for housing safely and soundly." [12 USC § 1463(a)]	The principal duties of the Director are to: (i) Oversee the *prudential* operations of each regulated entity; (ii) Ensure that each entity operates in a safe and sound manner, including maintenance of adequate capital and internal controls; (iii) Ensure that each entity fosters liquid, efficient, competitive and resilient national housing finance markets; (iv) Ensure that each entity complies with "this title" and the rules, guidelines and orders issued under the	The principal duties of the Director are to: (i) Oversee the *operations* of each regulated entity; (ii) Same. (iii) Ensure that each entity fosters liquid, efficient, competitive and resilient national housing finance markets *that minimize the cost of housing;* (iv) Same

Subject	Banking Law	S. 190	Committee Adopted H.R. 1461
		"authorizing statutes" [FHLB Act and the Charter Acts]; (v) Ensure that each entity carries out its statutory mission activities that are *authorized by and consistent* with this title and the authorizing Acts; (vi) Ensure that activities of each entity and manner of operation are consistent with public interest; and (vii) Ensure that each entity remains adequately capitalized. [Sec. 102]	(v) Ensure that each entity carries out its statutory mission activities that are *consistent* with this title and the authorizing Acts (vi) Not included as a principal duty. (vii) Not included as a principal duty. [Sec. 102]
Acquisitions and Transfers of Interest	A change in control of an insured bank requires the approval of the appropriate Federal banking agency. [12 USC § 1817(j)]	Review and, if warranted, reject acquisition or transfer of controlling interest in an Enterprise. [Sec. 102]	Same. [Sec. 102]
Delegation	Comptroller may delegate to any employee or duly authorized representative any power vested in the Office. [12 USC § 4a]	Director may delegate any functions to officers and employees of Agency. [Sec. 102]	Same. [Sec.102]
Litigation Authority	OCC has independent litigating authority. [12 USC § 93]	The Director has independent litigating authority. [Sec. 102]	Same. [Sec.102]
Congressional Testimony	OCC testimony does not have to be cleared. [12 USC § 250]	Same. [Sec. 102]	Same. [Sec.102 (b)]
Advisory Board	OCC has no formal advisory board. Federal Reserve Board has several advisory councils.	Federal Housing Enterprise Board - Advisory board composed of four members: Secs. of Treasury & HUD, Chairman of SEC, and the Director. Must meet at least once every three months. Annual	Housing Finance Oversight Board - The board composed of five members: the Director, the Secs. of Treas. & HUD, two full-time members (PAS). Full time members have a 3-year term. May be removed by the President only for cause. Paid staff. Annual testimony before Congress. Board is exempt from the Government in

Subject	Banking Law	S. 190	Committee Adopted H.R. 1461
		testimony before Congress. Board is not to exercise executive authority. [Sec. 103]	the Sunshine Act. [Sec. 103]
Authority to Require Reports	OCC may obtain reports and special reports in such form and containing such information as may be prescribed. [12 USC § 161]	The Director may require regular and special reports, including financial statements *determined on a fair value basis.* Reports can cover condition, management, activities, and operations, as the Director considers appropriate. [Sec. 104]	Same, except: Does not require financial reports to be on a *fair value basis.* [Sec. 104]
Disclosure of Charitable Contributions to Non-Profit Organizations	Certain CRA agreements made by a bank with non-governmental entities must be publicly disclosed. [12 USC § 1831y]	No similar provision.	The Director must require each Enterprise to publicly disclose in an annual report the total value of contributions to non-profit corporations and the amount and recipient of substantial contributions. [Sec. 105]
Examiners and Accountants: Authority to Contract; Inspector General	Banking agencies are required to conduct annual on-site examinations of institutions with $250 million or more in assets. [12 USC § 1820(d)]. OCC may hire examiners and other specialists without regard to the civil service laws. [12 USC § 482]	This section requires the Director to conduct at least annual on-site examinations of the regulated entities. It authorizes the Director to hire certain specialists to examine the *Enterprises* without complying with competitive service rules. It also provides that he can use bank examiners for both the Enterprises and FHLBanks on a reimbursable basis. Finally it establishes an Inspector General for the new Agency. [Sec. 105]	Same as S.190, and in addition: An examination of a regulated entity must include a review of the procedures established to identify and report on the purchase or sale of fraudulent loans. [Sec. 107]
Authority to Contract with Rating Agencies	OCC may enter into contracts with third parties, but such third parties probably could not examine banks. [18 USC § 1905]	Deletes the words "By rating organization" from heading of section 1319 of the '92 Act, but does not change substantive language. [Sec. 104]	Authorizes the Director to contract with *any entity*, including nationally recognized statistical rating agencies, to review the Enterprises. [Sec. 109]
Assessments	OCC charges assessments based on the asset size and condition of the national bank. [12 CFR part 8] Assessments are not appropriated or Government funds are not subject to apportionment. Excess assessments are retained by the Agency. [12 USC §§ 481, 482]	This section authorizes the Director to establish annual assessments to cover expenses and a working capital fund. Assessments are based on the total assets of the regulated entities, except costs of enforcement may be allocated to the entity responsible for the extra expenses. Undercapitalized	Same, except: (i) "Total assets" for FHLBanks to be defined by Director, consistent with GAAP. (ii) Assessments may be increased against any regulated entity that is not adequately capitalized to pay for additional supervision. (iii) Assessments may be adjusted to ensure that the costs of enforcement activities

Subject	Banking Law	S. 190	Committee Adopted H.R. 1461
		entities also may be assessed at a higher rate. Assessments are not to be considered "appropriated" or "Government" funds, and are not subject to apportionment. Assessments in excess of Agency's needs, including working capital, are to be remitted. The expenses for supervising the FHLBanks are not to be paid from assessments on the Enterprises. Likewise, the costs of regulating the Enterprises are not to be paid from assessments on the FHLBanks. [Sec. 106]	are borne only by the entity subject to these measures. (iv) The Director may make an immediate assessment against an undercapitalized entity or entity subject to an enforcement proceeding if necessary to pay for supervisory costs. (iii) Assessments may be deposited in a state or national bank. (iv) Funds left in the Oversight Fund and remaining from FHLBank assessments shall be treated as "assessments." (v) The Director is to provide OMB with financial plans and forecasts. No OMB consent or approval required. (vi) Agency subject to GAO audit. (vii) the Agency is to prepare annual financial statements, implement a financial management system, and the Director must make an assertion as to the effectiveness of internal controls. [Sec. 106]
Regulations and Orders	Comptroller may issue regulations to carry out the responsibilities of the Office. OCC regulations are not subject to prior Congressional review. [12 USC § 93a]	Dir. may issue any regulations, guidelines, directives or orders necessary to carry out his duties. Proposed regulations must be submitted to Congress at least 15 days before published for comment. [Sec. 107]	Same, except no requirement for prior Congressional review, and does not specifically mention "directives." [Sec. 110]
Review of New Programs and Activities	National banks may engage in activities authorized by statute, primarily the National Bank Act. Under 12 USC § 24, national banks may engage in activities that are part of the business of	Director may review the appropriateness and permissibility of any *Enterprise* ***activity*** to assure conformance with the purposes of the '92 Act and the Chartering Acts. The Director may require	An Enterprise must submit an application to the Director before engaging in a new "program," and the Director must publish notice of the application in the Federal Register and solicit public comment for 30 days. Director must consider public comments and determine that the program does not contravene and is not

Subject	Banking Law	S. 190	Committee Adopted H.R. 1461
	banking or incidental thereto. If an activity has not been previously approved by the OCC, the Comptroller may determine at any time that the activity is impermissible either because it is not part of or incidental to the business of banking, or because it constitutes an unsafe or unsound practice. [12 USC §§ 24 & 1818]	written applications before an ***activity*** is commenced. The Director may also prohibit or limit any activity determined to be inappropriate or impermissible. With respect to new "***products***" or activities that are not subject to the application process, the Enterprise must give the Director a 30- day prior notice before offering the product or commencing the activity. [Sec. 122]	inconsistent with the purposes of the 92 Act and the relevant Chartering Act, taking into consideration the definition of the terms "mortgage loan origination" and "secondary mortgage market," is not otherwise inconsistent with the safety and soundness of the Enterprise, and is in the public interest. An Enterprise must notify the Director of any new business activity, and the Director is to review the notice to determine if it consists of or relates to or involves any new "program. If so, it must be reviewed as a new program, described above. If it is not reviewed as a new program, the Enterprise may begin the new activity unless the Director issues a written denial within 30 days after receipt of the notice. [Sec. 122]
Activity Deemed to be a New Activity		No similar provision.	If the Director determines that any activity of an Enterprise consists of, relates to, or involves any new business activity the Director shall prohibit the activity except to the extent it is approved by the Director. [Sec. 122]
Approval and Conditional Approval		No similar provision.	The Director may at any time conditionally approve the undertaking of a particular new program or new business activity by an Enterprise. Such approval may, in the discretion of the Director, take the form of an enforceable written agreement. [Sec. 122]
Automated Underwriting and Education and Counseling Activities		No similar provision.	The Director may not prohibit an Enterprise from continuing to offer the automated loan underwriting system or engage in counseling and education activities. [Sec. 122]
New Business Activity Defined			A "business activity" is any offering, undertaking, transacting, conducting, or engaging in any conduct. A "new business activity" is defined as a business activity that is materially changed or materially different from any of the business activity that the Enterprise was engaging in on the effective date and has not been approved under these provisions. [Sec. 122]
Report on Programs and Activities			Within 180 days of the effective date of the FHRA of 2005 (18 months after enactment), the Enterprises must submit a report identifying each program and business activity engaged in as of the date of the report. [Sec. 122]

Subject	Banking Law	S. 190	Committee Adopted H.R. 1461
Prudential Management and Operations Standards	The banking agencies are required to promulgate standards relating to internal controls, information systems, internal audit, loan documentation, credit underwriting, interest rate exposure, asset growth, excessive compensation and benefits, and any other operational and managerial standards determined to be appropriate. If a bank fails to meet a standard prescribed by the agency, the agency may require the bank to submit a safety and soundness compliance plan. If the bank fails to submit a plan, or fails to implement an approved plan, the agency may issue a safety and soundness order and in addition, may limit the bank's growth, require additional capital, restrict interest rates paid on deposits, or take any other action. Under appropriate circumstances, the order may be issued ex parte and will be immediately effective. [12 USC §1831p-1].	The Director may establish standards by regulation, order or guideline for each Enterprise relating to such things as internal controls, IT systems, internal audit, market risk, liquidity and reserves, management of portfolio growth, and overall risk management. [Sec.108].	Same, except: (i) Standards must be issued; (ii) Standards apply to all regulated entities, not just the Enterprises; (iii) Specifically mentions standards on credit and counterparty risk (including concentrations of such risk), standards on maintenance of adequate records, and standards requiring the issuance of subordinated debt by a particular entity; (iv) Requires entities to submit and adhere to a remedial plan if the entity fails to meet any standard promulgated by regulation; and (v) If entity does not comply with plan, or fails to submit plan, the Director, by order, may prohibit growth of assets or take other actions. Although it requires standards on management of any asset and investment portfolio, it does not specifically mention standards on "portfolio growth." [Sec. 102]
Risk-Based Capital	By statute, the banking agencies are to establish a risk- adjusted capital standard. The agencies currently require banks to meet an 8% ratio of total capital to risk-adjusted assets, and a tier 1 capital to risk-adjusted ratio of at least 4%.[1] [12 USC § 1831o; 12 CFR parts 3 (OCC)]	The Director is to establish risk-based capital requirements for each regulated entity to ensure that they operate in a safe and sound manner with sufficient capital to support the risks that arise in the operations and management of each entity. [Sec. 110]	Same, except: (i) specifically makes necessary conforming amendment to the FHLB Act; (ii) provides that any person that receives information from the Director to enable the risk-based capital requirements to be applied must maintain the confidentiality of the information. [Sec. 111]
SEC Registration	Publicly traded bank holding companies are	Each regulated entity must register at least one class	Same. [Sec.115]

Tier 1 capital consists of stockholders equity, noncumulative perpetual preferred stock, and minority interests in consolidated subsidiaries.

Subject	Banking Law	S. 190	Committee Adopted H.R. 1461
	required to register with the SEC. Publicly traded national banks are required to register with the OCC rather than the SEC.[2]	of capital stock under the Securities Exchange Act of 1934. Each Enterprise must comply with sections 14 and 16 of that Act. [Sec. 109]	
Minimum Capital Levels	By statute, the banking agencies are to establish a risk- adjusted capital standard. The agencies currently require banks meet an 8% ratio of total capital to risk-adjusted assets, and a tier 1 capital to risk-adjusted ratio of at least 4%. A bank that is rated 1 under the CAMELS rating system currently must have a leverage ratio of at least 3%, otherwise a 4% ratio applies. [12 USC 3907; 12 CRF part 3 (OCC)]	Leverage ratio requirement is not changed under S. 190 for the FHLBanks. The Director can set a minimum capital requirement for the Enterprises that is higher than the statutory minimums. [Sec. 110]	Statutory minimum capital for the Enterprise, unless Director exercises his discretion to issue regulations described below. The minimum capital level for FHLBanks is defined as the amount of capital needed to comply with the leverage requirement established by the FHLB Act. Director may also change this minimum by regulation described below. [Sec. 112]
Discretion to Increase Capital	The OCC may increase the minimum capital requirements for a particular institution or class of institutions. [12 USC 3907]	The Director is to establish, by regulation, risk-based capital requirements for each of the regulated entities to ensure they operate in a safe and sound manner, with sufficient capital for the risks that arise in the operations and management of each entity. Implies that the Director can set different capital levels for individual entities. [Sec. 110]	The Director, by regulation, can set higher minimum capital ratios to the extent needed to ensure that the entities operate in a safe and sound manner. [Sec. 112] Director may order a temporary increase in minimum capital for a particular entity, if entity is engaging in certain unsafe practices or is in an unsafe condition, or violates a safety and soundness standard. [Sec. 112]
Capital for Programs or Activities	The OCC may increase the minimum capital requirements for a particular institution or class of institutions. [12 USC 3907; 12 CFR §§ 3.4 & 3.6]	No similar provision.	Director may, by regulation, require additional capital or reserves for any program or activity of a regulated entity. [Sec. 112]
Periodic Review			Director must periodically review the amount of core capital maintained by the Enterprises and the amount of capital retained by the FHLBanks, and minimum capital requirements for all of the regulated entities.. The Director, by reg, may

Companies with 500 or more shareholders and assets of $1 million or more.

Subject	Banking Law	S. 190	Committee Adopted H.R. 1461
			adjust the minimum capital as necessary. [Sec. 112]]
Critical Capital Levels			The Director is to establish, by regulation issued within 6 months of the effective date, the critical capital level for each FHLBank. The Director is to consider the critical capital levels for the Enterprises. [Sec. 112]
Golden Parachutes/ Withholding Compensation Excessive Compensation	By statute, golden parachute payments and indemnification payments are subject to prohibition or regulation by the FDIC. [12 USC 1828(k)] Excessive compensation is an unsafe or unsound banking practice and banks must comply with interagency guidelines on excessive compensation found at 12 CFR part 30, Appendix A (III).	The new Agency may limit or prohibit "golden parachute" payments and certain indemnification payments. The agency must issue regulations setting out the factors. Certain payments are prohibited, such as prepayment of salary in contemplation of insolvency. Indemnification payments are payment of legal fees or fines to a party who is assessed a civil money penalty, is removed, or is subject to an order to take affirmative actions. [Secs.111 and 206]	No golden parachute section, but the bill provides that the Director shall prohibit the payment of compensation that is not "reasonable" or "comparable" with compensation of similar private and public companies, and after considering any other factors the Director considers relevant, including any wrongdoing such as fraud, breach of trust or fiduciary duty, violation of a law or regulation, and insider abuse. The Director may require an entity to withhold payment to an executive officer even if the Director previously approved the employment contract. The entities need approval to compensate during the Director's review of that executive's compensation package. [Sec. 108]
Reporting Fraudulent Loans	Banks are required to file suspicious activity reports with FinCen when they suspect a violation of Federal law, money laundering or BSA. [12 CFR § 21.11]	The Director must require the regulated entities to file a report when the entity discovers it has purchased or sold a fraudulent loan. [Sec. 112]	The Director must require the regulated entities to file a report when the entity discovers it has purchased or sold a fraudulent loan. A regulated entity or affiliated party that files a report in good faith is granted immunity from civil liability under State and Federal law. [Sec.105]
FFIEC	The Comptroller, Chairman of the FDIC, Chairman of the Federal Reserve Board, Chairman of the NCUA Board, and Director of OTS are members of the FFIEC.		Adds the Director to the FFIEC. [Sec. 116]
Guarantee Fee Study	No similar provision.	No similar provision.	The GAO is required to study and report to Congress on the pricing, transparency and reporting of the guarantee fees that are charged by the regulated entities, or analogous fees, such as fees for advances. [Sec. 117]
Conforming Loan Limits	No similar provision.	No similar provision.	Adjusts the limits for the Enterprises' purchases of mortgages. Limit for single family mortgages set at $359,650, adjusted on Jan. 1 of each year by the change in the housing price index. [Sec. 123]
High Cost Area Limit		No similar provision.	In areas in which the median price of a home exceeds the conforming loan limit, a new limit is established equal to the lesser of 150% of the conforming loan limit, or

Subject	Banking Law	S. 190	Committee Adopted H.R. 1461
			the median price. Unless otherwise provided by the Director, mortgages purchased under this authority must be securitized. [Sec. 123]
Housing Price Index		No similar provision.	Establishes a new index for adjusting loan limits. The new index provides discretion for the Director to determine methodology for determining the change in average cost. GAO is required to audit methodology used. [Sec. 123]
Regular Adjustments to Conforming Loan Limit		No similar provision.	Conforming loan limits are to be adjusted on the effective date, and new limits are to be immediately effective. [Sec. 124]
Monitoring and Enforcing Housing Goals	Banks are subject to CRA and examined for compliance by the banking agencies. Separate CRA rating is assigned to each bank. [12 USC §§ 2901 – 2902; 12 CFR part 25]	The Director is given the responsibilities of the Secretary of HUD to monitor and enforce compliance with the Enterprises' housing goals. The Secretary of HUD retains responsibility for fair housing compliance. [Secs. 124-126]	Same, except responsibility for fair lending is transferred to the Director. [Secs. 127]
Annual Housing Report	No similar provision.	S. 190 retains current law requiring an annual housing report. Under current law, the report is on the extent to which the Enterprises have achieved their housing goals. Among other things, the report must aggregate and analyze census tract data to assess compliance with the various goals, examine actions that each Enterprise has or could take to promote or expand goals and promote first time home ownership. [Secs. 1324 of the 92 Act]	Same, except: (i) The report to include the extent each FHLBank is meeting its contribution requirement for the AHP and extent all the entities are achieving their purposes; and (ii) The Director must conduct a monthly survey of mortgage data, including the characteristics of individual mortgages including those not eligible for purchase by the Enterprises; sales price of the houses, LTV ratios, mortgage terms, and creditworthiness of the borrower. Data to be made publicly available. [Sec. 124]
Identification of Subprime Loans			Within one year of enactment, the Director shall formulate standards for determining if a mortgage purchased is "subprime," and identify the extent to which each Enterprise is involved in subprime mortgages. The Director is to compare the characteristics of subprime loans to other loans purchased and securitized by the Enterprises. [Sec. 124]
Housing Goals	Banks are subject to CRA and examined for compliance by the banking agencies. Separate CRA rating is assigned to each bank. [12 USC §§ 2901 – 2902; 12 CFR part 25]	Current authority to establish, monitor and enforce housing goals for the Enterprises is transferred to the Director. [Secs. 124-126]	Director is to establish annual housing goals for the Enterprises regarding: (i) single family housing; and (ii) multi-family housing. [Sec. 125]

Subject	Banking Law	S. 190	Committee Adopted H.R. 1461
Eliminating Interest Rate Differential		No similar provision.	Director must require the Enterprises to disclose information to allow the Dir. to assess disparities in rates changed to minority customers compared to non-minority customers of similar creditworthiness. If the Director determines a pattern of disparities exists, he is to forward a report to Congress and require the Enterprise to take action to remedy the disparity. {Sec. 125]
Single Family Housing Goal			The Director is to establish a goal for each Enterprise to purchase conventional, conforming, single family mortgage made by: (i) low-income families; (ii) families that reside in low-income areas or minority census tracts; and (iii) very low income families. If the Director determines an Enterprise is not in compliance with target, he is to provide notification to the Enterprise and permit it to comment, prior to making his determination public. [Sec.125]
Multi-Family Special Affordable Goad			The Director is to establish annual goals for the purchase of: (i) mortgages that finance dwelling units for very low-income families; and (ii) mortgages that finance dwelling units assisted by the low-income hosing tax credit. In meeting these goals, credit must be given to dwelling units in multi-family hosing that is financed by state or municipal bonds. [Sec. 125]
Definition of Low-income, Extremely low income.	The CRA regulations define "low-income" as less than 50% of the area median. "Moderate-income is defined as between 50% but less than 80% of area median.		The term "low-income area" is defined as a census tract or block in which the median income does not exceed 80% of the area. The term "very low-income" is defined as 50% or less of area median. "Extremely low-income" is defined as 30% or less of area median. [Sec. 125]
Adjustments			An Enterprise may petition the Director to reduce the level of any goal based on the market and economic condition of the Enterprise, or the condition of housing finance markets. A determination must be made within 45 days. A denial by the Director may be appealed to the U.S. District Court.
Duty to Serve Underserved Markets			Each Enterprise must "lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages: (i) secured by manufactured homes for very low, low and moderate-income families; (ii) to preserve the housing affordable to very low, low, and moderate-income families, including housing projects; (iii) housing for very low, low and moderate-income families in rural areas and other areas the Secretary identifies as lacking adequate credit. The Director is to develop a method for evaluating compliance with these goals, and rate the Enterprises for each goal and for: (i) the development of loan

Subject	Banking Law	S. 190	Committee Adopted H.R. 1461
			products and flexible underwriting guidelines; (ii) outreach; and (ii) volume of loans purchased. The duties are enforceable to the same extent as other housing goals. [Sec. 126]
Enforcement of Housing Goals	CRA compliance is considered when a bank or bank holding company applies to establish a branch, merge with another institution, acquire another institution, or obtain similar regulatory approvals. [12 USC §§ 2901 – 2902; 12 CFR part 25]	Authority to monitor and enforce housing goals is transferred to the Director. If the Director determines that an Enterprise has failed to meet a housing goal, or that there is a substantial probability of failure, the Director is to provide a written notice to the Enterprise. The Enterprise may respond in writing regarding whether the failure has occurred or is probable, and the feasibility of the goal. If the Director makes a final determination that there is a substantial probability of failure, or failure has occurred, the Director may require the submission of a corrective plan. Failure to adhere to the plan may be enforced with a cease-and-desist order or civil money penalty. [Sec. 124]	Same, but in *addition,* the Director may issue a cease-and-desist order, impose civil money penalties, or take other actions, such as a prohibition on engaging in new programs or business activities or suspend existing programs or activities. The Director must find a failure or probable failure to meet a goal and that the goal was feasible. [Secs. 127 and 130]
Affordable Housing Fund			The Enterprises are to establish an affordable housing fund to: (i) increase home ownership for extremely low- and very low-income family; (ii) increase investment in housing in low-income areas or areas of chronic economic distress; (iii) increase and preserve the supply of rental and owner-occupied housing for these families; and (iv) increase investment in economic and community development in economically underserved areas. Each Enterprise must allocate 5% of after-tax income, unless the Enterprise is undercapitalized. Amounts from the fund may be used to assist the production, preservation and rehabilitation of rental housing to benefit these families, and for homeownership, including through down payment and closing cost assistance. The Enterprises are also required to make leveraged grants on behalf of a sponsor such as a low-income housing fund, a State housing finance agency, or a non-profit

Subject	Banking Law	S. 190	Committee Adopted H.R. 1461
			affordable housing organization. Leveraged grants may be used, for such purposes as to provide loan loss reserves, capitalize a revolving fund, to capitalize an affordable housing fund, for risk sharing loans. [Sec. 128]
Affordable Housing Board			The Director is to appoint an affordable housing board of between 7 and 11 members, including the Director, the Secs. of HUD and Agriculture. The board is to determine extremely low- and very low-income housing needs, advise the Director, and review reports submitted by the Enterprises. [Sec. 128]
Consistency with Mission			The housing goals and housing fund provisions do not permit the Enterprises to engage in any program or activity that contravenes or is inconsistent with the Chartering Acts. [Sec. 129]
Protection of Proprietary Information	Exam information is treated as confidential and protected by the banking agencies. Information relating to proprietary business plans is protected under the Trade Secrets Act. [18 USC § 1905, 12 CFR part 4]	S. 190 transfers to the Director the authority to determine that certain information shall be treated as proprietary and not disclosed. [Sec. 125]	Same, except specifically includes information provided by the FHLBanks under section 10(j)(12) of the FHLB Act. [Sec. 130]
Prompt Corrective Action - Capital Classifications	The PCA statute requires the agencies to define, by regulation, 5 capital categories: (i) well capitalized; (ii) adequately capitalized; (iii) undercapitalized; (iv) significantly undercapitalized; and (v) critically undercapitalized.[3] The PCA statute provides that the agencies may not set the level for a critically	There are four capital classes for the Enterprises: (i) adequately capitalized; (ii) undercapitalized; (iii) significantly undercapitalized; and (iv) critically undercapitalized. No classifications established for FHLBanks. [Sec.141]	Same for Enterprises. Provides that the Director is to establish, by regulation, four capital classes for the FHLBanks, taking due regard of the classifications and criteria established for the Enterprises, but with such modifications as the Director determines appropriate. (The names of the four classes are the same as for the Enterprises, but the criteria may be different [Sec. 141]

The banking agencies currently define "well capitalized" as having total risk-based capital of at least 10% and leverage ratio capital of at least 5%. Adequately capitalized requires total risk-based capital ratio of at least 8% and a leverage ratio of at lest 4% (or if the bank is ated 1 under the CAMELS system, leverage ratio of at least 3%. An undercapitalized bank has a total risk-based capital ratio of not less than 8% or a leverage ratio of not less than 4% (unless CAMELS rate 1, in which case the lower limit is 3%). A significantly undercapitalized ank has a total risk-based capital of less than 6% or a leverage ratio that is equal to or less than 3%). A critically undercapitalized bank has a ratio of tangible equity to total assets that is less than 2%. In addition, the regulations specify various minimum ratios of core or tier 1 apital to total assets. See, eg. 12 CFR §6.4.

Subject	Banking Law	S. 190	Committee Adopted H.R. 1461
	undercapitalized below 2 percent of total assets. [12 USC § 1831o]		
Capital Distributions	A bank may not make a capital distribution if it would result in the bank becoming undercapitalized. [12 USC § 1831o]	An entity may not make a capital distribution if it would result in the entity becoming undercapitalized. [Sec. 141]	Same. [Sec. 141]
Discretionary Classification/ Reclassification	If the agency determines (after a hearing) that a bank is in an unsafe or unsound condition, or it received a less than satisfactory rating for asset quality, management, earnings or liquidity, the agency may reclassify a well capitalized bank as adequately capitalized, and may require other banks to comply with the sanctions noted above for undercapitalized or significantly undercapitalized banks. [12 USC § 1831o]	The Director may reclassify a regulated entity if it is engaging in certain risky or unsafe conduct, or is in an unsafe condition. [Sec. 141]	Same. [Sec. 141]
Supervisory Actions for Undercapitalized Entities	An undercapitalized bank is subject to increased regulatory scrutiny and must file an acceptable capital restoration plan. In addition: (i) Asset growth may be limited (ii) No new acquisitions, branches, or new lines of business without regulatory approval; (iii) No brokered deposits/excessive interest payments on deposits; and (iii) The agency may apply further restrictions as described below for significantly undercapitalized banks. [12 USC 1831o]	An undercapitalized regulated entity must submit an acceptable capital restoration plan. Capital distributions prohibited if the distribution would result in a lower capital classification. Director is to monitor the condition of the entity and compliance with the capital restoration plan. Asset growth is restricted unless consistent with the plan and A*tangible equity*≅ is increasing. Director is to approve all new activities and acquisitions, and such actions must be consistent with the plan. If necessary, Director may take actions authorized for significantly undercapitalized entities. [Sec. 142]	Same, except new growth is linked to increase in total capital, not "tangible equity." [Sec. 142].
Supervisory Actions for Significantly Undercapitalized Entities	A banking agency *must* take at least one of the following actions with respect to a bank that is significantly undercapitalized: (i) Require the bank to raise capital by selling shares, including voting shares; (ii) Requiring the bank to be acquired or merged if	In addition to the actions available for undercapitalized entities, the Director *must* take one or more of the following actions: (i) limit the increase in or order reduction in obligations; (ii) limit or prohibit growth or require contraction in assets; (iii) require the acquisition of new capital;	Same. [Sec. 143]

Subject	Banking Law	S. 190	Committee Adopted H.R. 1461
	grounds exist for appointment of a receiver; (iii) Restrict transactions with affiliates; (iv) Restricting interest paid on deposits; (v) Limiting asset growth; (vi) Restricting risky activities; (vii) Ordering election of new Board of Directors; (viii) Requiring bank to dismiss directors or officers; (ix) Requiring bank to hire qualified officers and employees; (xi) Prohibiting deposits from correspondent banks; (xii) Prohibiting capital distributions by holding company without regulatory approval; (xiii) Requiring the divestiture of subsidiaries or affiliates; (xiv) Requiring the holding company to sell the bank; (xv) Taking any other action the agency determines appropriate, including actions available for critically undercapitalized institutions. [12 USC 1831o]	(iv) require the termination or restriction of activities; (v) order a new election of the board of directors, or dismiss particular directors or executive officers, and hire new executive officers; (vi) reclassify the entity as critically undercapitalized if it has not submitted and adhered to an approved plan; and (vii) take any other action that will better restore the capital of the entity. [Sec. 143]	
Restriction on Compensation and Bonus	A significantly undercapitalized bank may not, without the prior written approval of the agency, pay any bonus to any senior executive officer, or provide compensation to such officer at a rate in excess of that paid in the 12 months prior to the bank becoming undercapitalized. [12 USC 1831o]	A significantly undercapitalized entity may not pay any bonus to an executive officer or increase compensation beyond the average rate for the past 12 months, without Director approval. [Sec. 143]	Same. [Sec. 143]
Review of Assets and Obligations	Banking agency could order a bank to dispose of assets or acquire an asset or obligation under the agency's cease-and-desist authority, if the grounds	Director could order a regulated entity to dispose of assets or acquire an asset or obligation under the agency's cease-and-desist authority, if the grounds	The Director is to conduct periodic reviews of the assets and liabilities of each Enterprise. Director may order an Enterprise to dispose of or acquire any asset or obligation, if consistent with safety and soundness or with the purposes of the 92

Subject	Banking Law	S. 190	Committee Adopted H.R. 1461
	for a cease-and-desist order exist. [12 USC § 1818(b)]	for a cease-and-desist order exist.	Act or authorizing statutes. [Sec.113]
Corporate Governance of Enterprises	Publicly traded bank holding companies are subject to Sarbanes-Oxley provisions. Publicly traded banks that are required to register with the OCC under the '34 Act are subject to sections 302, 303, 304, 306, 401(b), 404, 406 and 407 of Sarbanes-Oxley. These sections are administered by the OCC with respect to national banks. [15 USC § 78*l*(i)] Banking agencies are required to promulgate substantially similar regulations to those of the SEC, or to publish a detailed explanation for why such regulations are not appropriate.	No similar provision, but regulated entities are required to register under the '34 Act and therefore are subject to many of the provisions of Sarbanes-Oxley. The Enterprises (but not the FHLBanks) are subject to the requirement to have an independent audit committee under section 301 of Sarbanes-Oxley.	With respect to the Enterprises, the bill mandates various corporate governance measures, including: (i) a majority of the seated members of the board of each Enterprise must be independent board members, as defined in NYSE rules; (ii) Enterprise board must meet at least 8 times a year; (iii) non-management directors must meet at regularly scheduled executive sessions without management participation; (iv) a quorum is at least a majority of the seated board members, and no proxy voting; (v) management shall provide board members with adequate and appropriate information; (vi) at least annual board review of all legal and regulatory requirements; (vii required committees include an audit committee, a compensation and nominating committee, and a corporate governance committee; (viii) must comply with SEC audit committee requirements and NYSE rules; (ix) compensation of directors must be reasonable and not focus solely on earnings performance; (x) if restatement is required due to material noncompliance as a result of misconduct, the CEO and CFO shall reimburse the Enterprise. [Sec. 114]
Code of Conduct and Ethics	Publicly traded banks that are subject to 406 of Sarbanes-Oxley, as administered by the OCC. [15 USC § 78*l*(i)]	The regulated entities are subject to section 406 of Sarbanes-Oxley.	An Enterprise shall establish a written code of conduct and ethics that includes standards in section 406 of Sarbanes-Oxley. [Sec.114]
Responsibilities of the Board	Publicly traded banks that are subject to 404 of Sarbanes-Oxley, as administered by the OCC. [15 USC § 78*l*(i)] Similar requirements are also imposed under the FDI Act. [12 USC 1831m]	The regulated entities must comply with section 404 of Sarbanes-Oxley, which requires an internal controls report by management and by a certified public accounting firm.	The Board of an Enterprise is responsible for directing the conduct and affairs of the Enterprise. Responsibilities include policies and procedures relating to corporate strategy, risk policy, legal compliance, corporate performance, compensation, integrity of accounting and financial reporting, process and adequacy of reporting and disclosures. [Sec. 114]
Prohibition on Extensions of Credit	Publicly traded banks that are **not** subject to 402 of Sarbanes-Oxley, as administered by the OCC. [15 USC § 78*l*(i)] However, the Federal Reserve	The regulated entities are subject to section 402 of Sarbanes-Oxley, which restricts loans to board members and executive officers.	An Enterprise may not extend or maintain credit in the form of a personal loan to any board member or executive officer, as provided by section 13(k) of the Securities and Exchange Act of 1934. [Sec. 114]

Subject	Banking Law	S. 190	Committee Adopted H.R. 1461
	Act limits bank loans to directors and senior officers. [12 USC §§ 375a & 375b]		
Certification of Disclosures			The CEO and CFO of an Enterprise shall review and certify quarterly and annual reports as required by section 302 of Sarbanes-Oxley.
Change in Auditors	Publicly traded banks that are **not** subject to 203 of Sarbanes-Oxley, as administered by the OCC. [15 USC § 78*l*(i)]	Section 203 of Sarbanes-Oxley prohibits a registered public accounting firm from providing audit services to an issuer (which includes the regulated entities) if the lead audit partner has performed audit services for that issuer in each of the 5 previous years.	An Enterprise may not accept auditing services from the same external auditing firm if the lead or coordinating audit partner has performed audit services for the Enterprise in each of the five previous. [Sec.114]
Compliance Program	OCC examiner guidance provides that all banks must have a consumer compliance program in place that includes appropriate internal controls.	No similar provision.	The compliance program of an Enterprise shall be headed by a compliance officer who reports directly to the board of directors. [Sec. 114]
Risk Management Program	Safety and soundness standards promulgated under 12 USC § 1831-p require banks to have systems and controls to monitor various risks to the institution. OCC supervisory guidance requires banks to have appropriate risk management program in light of the size and activities of the institution.	No similar provision.	The risk management program of an Enterprise shall be headed by a risk management officer who reports directly to the CEO. [Sec. 114]
Compliance with Other Laws		No provision for de-registering.	If an Enterprise de-registers or has not registered its common stock with the SEC under the >34 Act, the Enterprise shall comply or continue to comply with section 10A and 13(k) of the >34 Act and sections 302, 304, and 406 of Sarbanes-Oxley. An Enterprise may not de-register with the SEC without giving 60 days prior notice to the Director. [Sec. 113]
Modification of Certain Provisions	Not applicable.	No similar provision.	The Director may modify NYSE standards made applicable by this Act through a rulemaking. [Sec. 114]

Subject	Banking Law	S. 190	Committee Adopted H.R. 1461
Conservatorship and Receivership - Enterprises	A conservator or receiver may be appointed for a national bank if:[4] (i) Assets are less than obligations; (ii) Substantial dissipation of assets or earnings due to violation of law or unsafe practice; (iii) Unsafe or unsound condition; (iv) Willful violation of a final C&D; (v) Concealment of records; (vi) Bank is likely to be unable to pay its obligations in the normal course; (vii) Bank has or is likely to incur losses that will deplete substantially all of its capital, and no reasonable prospect for recapitalization without Federal aid; (viii) Any violation of law or unsafe or unsound practice that is likely to cause insolvency; a substantial dissipation of assets or earnings; weaken the bank=s condition, or prejudice depositors; (ix) Consent; (x) Loss of FDIC insurance; (xi) Bank is undercapitalized under PCA and has no reasonable prospect of becoming adequately capitalized, or has failed to submit or implement a capital restoration plan; (xii) The bank is critically undercapitalized under PCA; (xiii) The bank is convicted of certain money laundering crimes.	Director may appoint a conservator or receiver for an Enterprise if any of 12 grounds exist: (i) Assets insufficient for obligations; (ii) Substantial dissipation of assets or earnings due to a violation of law or unsafe practice; (iii) Enterprise is in an unsafe or unsound condition; (iv) Willful violation of a cease-and-desist order; (v) Concealment of books and records; (vi) Inability to meet obligations; (vii) Incurred or likely to incur losses that will deplete substantially all of the capital, and no reasonable prospect to become adequately capitalized; (viii) Violation of law or unsafe practice likely to cause insolvency or substantial dissipation of assets or earnings, or is likely to weaken the condition of the Enterprise; (ix) Consent; (x) Enterprise is undercapitalized and no reasonable prospect of becoming adequately capitalized, or failed to submit or implement a capital restoration plan; (xi) Enterprise is critically undercapitalized; and (xii) The A.G. notifies the Director that the Enterprise has been found guilty of violating certain money laundering laws. The conservator or receiver may not revoke, terminate or annul the Enterprise's charter. [Sec. 144]	Same. [Sec. 144]

[4] The FDIC may appoint itself conservator for any insured institution if one of these grounds exist, and the FDIC determines that the appointment is necessary to reduce the risk of or amount of loss that the FDIC fund is expected to incur.

Subject	Banking Law	S. 190	Committee Adopted H.R. 1461
Conservatorship Receivership-FHLBanks		No provision in S. 190. Whenever FHFB finds that the efficient and economical accomplishment of the purposes of the FHLB Act will be aided by such action, the Board may liquidate an FHLBank. [12 USC 1446]	Same conservatorship and receivership provisions as for Enterprises. [Sec.144]

Subject	Banking Law	S.190	H.R. 1461
Cease-and-Desist	A C&D may be issued if the bank or an IAP has engaged, is engaging, or the agency has reasonable cause to believe is about to engage in an unsafe or unsound practice; violating a law, regulation, or order; violating a condition imposed in writing; or violating a written agreement. A cease-and-desist order may be based on a less than satisfactory exam rating in credit risk, market risk, operations, or corporate governance. A cease-and-desist order may include a requirement to take certain affirmative actions. [12 USC 1818(b)]	The Director is given authority to issue a cease-and-desist order against a regulated entity or affiliated party for engaging in an unsafe or unsound practice; violating a law, regulation, or order; violating a condition imposed in writing; or violating a written agreement. A cease-and-desist order may be based on a less than satisfactory exam rating in credit risk, market risk, operations, or corporate governance. A cease-and-desist order may include a requirement to take certain affirmative actions. [Sec. 151]	Same, except the Director may not enforce compliance with the housing goals, mortgage data collection requirements, reports on housing activity requirements, and annual requirements to contribute to the AFP under this authority. A cease-and-desist order may be issued for less than satisfactory exam rating in asset quality, management, earnings or liquidity. Bill specifies that possible affirmative actions may include reimbursement of compensation, and an attachment of property of an entity or party. [Sec. 161]
Temporary cease-and-desist Order	Following initiation of a C&D action, the agency may issue an ex parte order directing a bank or IAP to immediately cease an activity or to take a specified action. [12 USC § 1818(c)]	Authorizes the Director to issue a temporary cease-and-desist order pending resolution of the permanent order. The temporary cease-and-desist order is immediately effective and may be issued without prior notice or hearing. Unlike banking agencies, if agency seeks enforcement of the temporary order in court, the court will determine if the original notice of charges are "accurate." [Sec. 152]	Same, except when the agency goes to court to seek enforcement of the temporary order, court will only need to determine if the temporary order was violated or threatened violation. This is the same as for the banking agencies. [Sec. 162]
Prejudgment Attachment	Cease and desist order or temporary cease and desist order may prohibit a party from withdrawing or transferring funds, if the Agency meets the standards of Rule 65, other than the requirement to demonstrate irreparable harm. [12 U.S.C. 1818(b)(10)]		The Director may go to court under Rule 65 to seek an order prohibiting any person subject to an Agency proceeding to withdraw or transfer funds. Director need not show irreparable harm. [Sec. 163]
Removal and Prohibition Authority	An IAP subject to a removal, suspension, or prohibition order may not, without the written agency permission, hold any office, or participate in any manner, in the affairs of any insured	Like the banking laws, the Director may remove or suspend a person from participating in the affairs of a regulated entity for such things as violating laws, regulations, orders, engaging in unsafe practices, and	Same, except the removal or suspension order may also prohibit the regulated entity from paying to the person any compensation or any other thing of value in connection with any resignation, removal, retirement, or other termination of employment. [Secs. 129 and 166]

Subject	Banking Law	S.190	H.R. 1461
	institution, credit union, bank holding company, bank regulatory agency, or the FHFB. [12 USC § 1818(e)]	breaching fiduciary duties. A person who is removed or suspended may not participate in the affairs of any regulated entity, while the order is in effect without the consent of the Director. [Sec. 153]. Also like the banking laws, a removal or suspension order also prohibits the person from voting the shares of any regulated entity, or transferring such shares.	
Enforcement of Orders	Banking agencies may go to court to enforce any notice or order issued under the enforcement provisions, or under prompt corrective action, or issued to enforce compliance with a safety and soundness standard or guidelines. [12 USC 1818(i)(1)]	Like the banking agencies**,** the Director may go to the US District Court to obtain enforcement of an enforcement order or subpoena, or request the Attorney General to bring such an action. [Sec. 154].	Same, except: (i) Only applies to enforcement of orders and notices under the capital provisions (including prompt corrective action) and enforcement provisions. [Sec. 164]
Civil Money Penalties (CMP)	There are 3 categories of CMP that may be imposed on an institution or IAP. There are three tiers of penalties, depending on the nature of the violation: (i) $6,500 per day; (ii) to $32,500 per day; and (iii) A fine up to $1,250,000[5] per day. [12 USC 1818(i)(2)]	Similar to the banking agencies, the Director may assess a CMP against a regulated entity or affiliated party for violating certain laws, orders, regulations, conditions and written agreements. There are three tiers of penalties, depending on the nature of the violation: (i) $10,000 per day; (ii) $50,000 per day; and (iii) $2,000,000 per day for an entity and a total of $2,000,000 for an individual. Unlike the banking agencies, only violations of certain laws can result in a CMP, and the amounts of the CMP differ. Violations of the housing goals are not covered under this section. [Sec. 155]	CMP may be imposed for violating the 92 Act or the Chartering Act, or any rule, regulation, or order issued under these statutes. Violations of the housing goals or the AHP are not covered in this section. The Director may go to court to obtain a monetary judgment if the party refuses to pay the penalty. The Director may issue regulations pursuant to which an entity may reimburse or indemnify a party subject to a CMP. [Sec. 165]

Id. The penalty for an insured institution is capped at the lesser of $1,250,000 or 1% of the institution=s total assets.

Subject	Banking Law	S.190	H.R. 1461
Criminal Penalty	A criminal penalty is imposed for violating a removal or suspension order.{12 USC 1818(j)]	Like the banking laws, a criminal penalty is imposed for violating a removal or suspension order. [Sec. 156]	Same. [Sec. 167].
Appointed Directors of Enterprises	Not applicable.	Eliminates the slots for the Presidentially appointed members of the boards of directors of the Enterprises, and changes the size of the boards to 13 members for each Enterprise, or such other number as the Director determines appropriate. [Sec. 172]	Eliminates the slots for the five members of the boards of Fannie Mae and Freddie Mac who are appointed by the President and replaces them with elected positions. Reduces the size of the board from 18 to a board of not less than 7 and not more than 15. [Sec. 181]
Reports on Portfolio Operations, Etc.	Not applicable.	Within 2 years, the Director, the Secretary of the Treasury, the Federal Reserve Board, the FDIC and the NCUA Board are to issue a joint report to Congress on the extent to which obligations issued by regulated entities are held by depository institutions and the risks of such holdings. Within 2 years, the Director is to report to Congress on the mortgage and MBS holdings of the regulated entities, the risks such holdings may pose, and whether such holdings are consistent with the purposes of the entities. The Director is also to issue a report to Congress on the extent of obligations issued by the regulated entities and the appropriate level of such issuances. Each fiscal year, the Director is to report to Congress on the risk-based capital levels of the *Enterprises*, and the minimum and critical capital levels for the *Enterprises*. [Sec. 161]	Within 12 months, the Director is to report to Congress on the portfolio holdings of the Enterprises, both mortgages, MBS and other assets, a description of the risk of such holdings and the risk management undertaken by the Enterprises; an analysis of portfolio holdings for safety and soundness; an assessment of whether such holdings fulfill the mission of the Enterprises; and an analysis of the potential systemic risk implications for the Enterprises and the financial markets of portfolio holdings. [Sec. 182]

Subject	Banking Law	S.190	H.R. 1461
Study of Alternative Secondary Market Systems			The Director, in consultation with the Federal Reserve, Secs. of the Treasury and HUD, is to undertake a study on the effects on the markets of alternatives to the current secondary market system for hosing finance. Items to consider is repeal of the chartering Acts, and increasing the number of charters [Sec. 184]
Effective Date			The bill becomes effective one year after date of enactment. [Secs. 185 & 211]
FEDERAL HOME LOAN BANKS			
Directors		Management of each FHLBank is vested in a board of 13 directors, or such other number as the Director determines appropriate.[6] All directors are to be elected by a majority vote of the Bank's members. A majority of the directors must be "member directors," e.g., an officer or director of a member "bank."[7] Non-member directors are to be nominated by the Bank's board of directors, and must comprise at least one-third of the board. At least two non-member directors must have experience representing consumer or community interests on banking, credit, housing, or financial consumer protections. [Sec. 201]	The board of directors of each FHLBank is to be composed of 13 directors, or such other number as the Director determines appropriate.[8] All of the directors are to be elected by the members of the Bank and shall be U.S. citizens and either a resident of the Bank's district or an officer or director of a Bank member located in that district. At least one-third of the directors must be independent and not an officer or director of a member. Independent directors are to be nominated and elected by the member institutions. At least two independent directors shall represent the public interest. the term of office for directors is changed from 3 years to 4 years. [Sec. 202]
	.		

[6] But see sec. 8(e) of the FHLB Act, 12 USC § 1427(e) that grandfathers the number of appointed and elected directors at each FHL Bank as of 1961. It is not clear of this grandfather provision would continue to control the minimum number of directors following enactment of S.190. Under H.R.1461 the grandfather provisions are deleted.

[7] Nonblank may also be members of a FHLBank. A better term would be "member institutions."

[8] Under H.R. 1461 the grandfathered director positions are deleted.

Subject	Banking Law	S.190	H.R. 1461
Compensation		FHLB Act cap on directors' salaries is lifted. [Sec. 201]	FHLB Act cap on directors' salaries is lifted. Compensation is to be set by the Bank in accordance with resolutions adopted by the board and approved by the Director. [Sec. 202]
Oversight		The Director of the new Agency is given the supervisory and regulatory responsibilities of the Federal Housing Finance Board. [Sec. 203]	Same. [Sec. 203]
Finance Corporation		A "finance corporation" is established as a joint subsidiary of the FHLBanks. The finance corporation assumes the functions of the Office of Finance in issuing consolidated debt. [Sec. 204]	No similar provision. The Office of Finance to issue joint debt. [See below, Sec. 204]
Joint Activities			Subject to the regulation of the Director, any two or more Banks may establish a joint office for the purposes of performing functions for or providing services to, the Bank on a common or collective basis, or may require that the Office of Finance perform such functions. [Sec. 204]
Information Sharing			The Director shall prescribe regulations to ensure that each Bank has access to information concerning the other Banks to enable the recipient to evaluate the nature and extent of its joint liability. Privileges are not waived. [Sec. 205]
Reorganization and Voluntary Merger			Explicit authority is granted for the voluntary merger of two or more Banks, subject to regulatory approval. Section 26 is amended by deleting the authority of the regulator to liquidate Banks under that provision. The regulator retains the authority to reorganize Banks. [Sec. 206]
SEC Exemptions		The FHLBanks are exempt from a number of Securities laws, including: FHLBanks are exempt from sections 13(e), 14(a), 14(c) and 17A of the >34 Act, and section 15 of the >34 Act with respect to FHLBank capital stock. FHLBank capital stock is to be considered "exempted securities" under the >33 Act and the >34 Act.	Same, except the House bill does not protect *brokers and dealers* who effect transactions in FHLBank capital stock or debt obligations from the definition of Government securities broker and dealer found in the >34 Act. [This may be a drafting error.] [Sec. 207]

Subject	Banking Law	S.190	H.R. 1461
		The debt obligations of the FHLBanks are "exempted securities" under the >33 Act and "government securities" under the >34 Act and the Investment Company Act. [Sec. 205]	
Community Financial Institution Members		No similar provision.	The definition of a "community financial institution" is increased from $500 million in average assets to $1 billion. Permissible purposes for long-term FHLBank advances are expanded to include advances to community financial institutions for "community development activities." [Sec. 208]
Affordable Housing for Long-Term Care Facilities			The GAO is to conduct a study of the use of AHP to determine how and the extent to which the programs are used to assist long-term care facilities. [Sec. 210]
TITLE III TRANSFER OF OFHEO AND FHFB FUNCTIONS			
Abolishment of OFHEO		Six months after the date of enactment, OFHEO is abolished. The OFHEO Director is to use the six-month period to wind up the affairs of the agency. The new Agency may use OFHEO property to perform transferred functions. Obligations and duties of the U.S. and OFHEO will not be affected, and lawsuits will continue. [Sec. 301]	Same, except OFHEO is abolished one year after the date of enactment. [Sec. 301]
Continuation of Regulations		Regulations issued by OFHEO or the Secretary of HUD, and court orders relating to the functions transferred under this Act remain in force and effect until modified or superseded. [Sec. 302]	Same. [Sec. 302]

Subject	Banking Law	S.190	H.R. 1461
Transfer and Rights of OFHEO Employees		Each OFHEO employee shall be transferred to the new Agency not later than the date OFHEO is abolished. Each employee guaranteed a new position with the same grade, status, and tenure. Employees holding a permanent position shall not be involuntarily separated for at least 12 months, except for cause. The Dir. may decline to accept the transfer of an employee not in the competitive service because of its confidential or policymaking charter, and non-career employees in the SES. One year after OFHEO is abolished, the Dir. may reorganize the Agency and employees may receive early retirement benefits as a result. Transferred employees may retain health and other benefits for 12 months. [Sec. 303]	Same. [Sec. 303]
Abolishment of Federal Housing Finance Board		One year after the date of enactment, the FHFB is abolished. The same transfer provisions as for OFHEO apply. [Sacs. 311-313]	Same. [Secs. 321-323]
Basel II Study		The Federal Reserve Board is required to study the effects of the Basel II capital accord on the regulated entities, and submit a report to Congress two years after the date of enactment.	
Affordable Housing Study		The I.G. is to conduct an annual audit of the affordable housing activities of the Enterprises to ensure they support the affordable housing missions of those Enterprises. [Sec.402]	